

Florida Law Course



 ***Health Positive!***

© Health Positive!, Inc., 2006, 2007, 2008

Author: Sharon Burch, MSN, RN, NCTMB is a nurse practitioner, massage therapist and educator who specializes in bridging holistic and mainstream approaches to health and wellness. She is the author of two textbooks: *Holistic Pathology for Body-Centered Therapists* and *Recognizing Health and Illness: Pathology for Massage Therapy and Bodywork Students*, as well as numerous peer-reviewed articles and home study courses. She is the director of Health Positive! and lives in Indiana.

DISCLAIMER: Health Positive! believes that **hands-on skills require hands-on education and supervision**, and these are not possible in home study courses. Therefore, the goals of this course are to: 1) enhance the learner's conceptual understanding, logic and/or attitudes so that the learner may render more competent professional service and 2) introduce learners to approaches that are new to them, so that they have a clearer understanding from which to seek hands-on training.

Neither the author of this study guide, nor the author of the textbook, assumes any liability for the learner's application of the information contained herein.

This course is not intended for use in prescribing treatments, therapies or recommendations of any kind.

Key Vocabulary Words

Against Medical Advice (AMA): refers to situations where the patient wishes to leave the facility against his or her physician's advice

Assault: placing someone in immediate fear or apprehension of a harmful or noxious touching without that person's consent (intentional tort)

Autonomy: freedom of independent decision-making

Battery: a harmful or offensive touching of another without his or her consent or without a legally justifiable reason (intentional tort)

Beneficence: doing good or kindness; the principle of beneficence expects that health professionals always try to help patients, if possible

Bioethical principles: patient's autonomy; beneficence; nonmaleficence; justice and professional ethics

Boundary: a limit; may be in physical, emotional, financial or any other area; defines what will and will not occur between the therapist and client

Breach of confidentiality: occurs when someone who has legitimate access to health information about someone else shares it with people who have no legitimate reason to know

Civil law: case is brought by an individual or entity against another for harm based in tort, contract, labor or privacy

Common law: developed on a case by case basis from England when the king decided in his "divine right"

Competence (professional): the ability to provide a level of care according to a standard of care and according to the profession's code of ethics

Competency (personal): the ability to understand the nature and consequences of a medical procedure

Consent: to permit, approve or comply

Countertransference: the projection by a therapist of feelings, needs or issues onto a client, instead of recognizing them as his or her own

Criminal law: a case is brought by the state or federal government for violation of written criminal code or statute

Defamation: false communication to a third party that damages that person's reputation; libel (written) and slander (oral) are two forms of defamation (quasi-intentional tort)

Ethics: declarations of what is right or wrong and of what ought to be

Ethics Committee: group created to deal with ethical problems and dilemmas in health care

Felonies: more serious crimes punishable by relatively large fines and/or imprisonment for more than one year and, in some states, by death

Good Samaritan law: protects those who provide health care for an emergency or disaster without reimbursement

Incompetence (rofessional): the failing of moral commitment in upholding a code of ethics

Independent contractor: a person who is self-employed and who enters into contracts to provide professional services to various entities such as hospitals, clinics and/or clients

Informed consent: the process of providing adequate information for a patient in an understandable fashion to enable the patient to make a knowledgeable decision about whether to accept or refuse a proposed treatment; disclosure requirement includes type of procedure or treatment; nature and purpose of treatment; alternative, and consequences of no treatment

Intentional infliction of emotional distress: in order to establish the tort of intentional infliction of emotional distress, the plaintiff must establish that the defendant's conduct is outrageous and beyond the bounds of common decency

Intentional tort: requires that there is an intentional interference with one's person, reputation or property (e.g., assault, battery, false imprisonment)

Interrogatories: written questions that must be answered under oath

Invasion of privacy: the tort of unjustifiably intruding upon another's right of privacy by appropriating his or her name or likeness; unreasonably interfering with his or her seclusion; publishing private facts, or publicly placing a person in a false light (quasi-intentional tort)

Justice: treating everyone fairly

Law: the foundation of statutes, rules and regulations that govern people, relationships, behaviors and interactions with the state, society and federal government

Liability: an individual's responsibility for failure to meet a standard of care or for failure to perform a duty that causes harm to a client

Liability insurance: protects personal and professional assets in the event of a professional liability and/or malpractice suit

Libel: written defamatory statements

Malpractice: dereliction of professional duty through negligence, ignorance or criminal intent

Misdemeanor: lesser crimes with fines established by the state, which are usually modest, and/or imprisonments of less than one year

Negligence: the failure to use such cares as a reasonably prudent and careful person would use under similar circumstances; it is the doing of some act, which a person of ordinary prudence would not have done under similar circumstances; elements of negligence include duty, breach of duty, proximate cause and harm or damage

Nonmalfeasance: do no harm; health care professionals should avoid harming a patient

Plaintiff: the person or entity bringing the suit or claim

Precedent: a legal decision serving as an authoritative rule in similar cases that follow

Product liability: different from malpractice in that the patient may not

have to prove a deviation from a standard of care if the courts approve a strict liability standard that makes the product's manufacturer liable

Professional negligence: an omission by a health care provider in the rendering of professional services that is the proximate cause of a personal injury or wrongful death

Res Ipsa Loquitur: a legal doctrine that means "the thing speaks for itself"; used in malpractice cases when the evidence is obvious, such as leaving a sponge in a surgical patient

Respondeat Superior: a legal doctrine that means "let the master answer"; used to hold employers responsible and liable for the negligent acts of their employees

Sovereign immunity: a defense that protects a federal or state employee when acting within the scope of employment

Standard of care: a measure of the care that a reasonable and sensible person would use in the same situation

Stare Decisis: "to stand by things decided" or to adhere to the decided case

Statute of limitations: used as a defense to a tort action; the statute requires that a claim be filed within a specific amount of time

Tort: a civil wrong, other than a breach of contract; harm against a person, whereas a crime is a harm against the state

Transference: the projection by a client of feelings, needs or issues onto a therapist, instead of recognizing them as his or her own

Primary Sources: Taber's Cyclopedic Medical Dictionary © 1998 F.A. Davis Company; Merriam-Webster Collegiate Dictionary © 2000 Merriam-Webster, Inc.; Legal and Ethical Issues in Health Occupations © 2002 WB Saunders, Co.

Introduction

This home study course was developed for the massage therapist or massage establishment owner who will be renewing their license in the state of Florida. It provides an overview, including a brief explanation and/or summarization of all sections of the Laws and Rules that are relevant to massage therapy in the state of Florida as of December 2004 (Chapters 480 and 456 of the Florida Statutes and Rule Chapter 64B7 of the Florida Administrative Code). **However, the most current official text will rule in the event of any official interpretation of the law and of your obligations under the law.**

This course is meant to familiarize you with the intent and provisions of the statutes and rules, but it does not replace or supersede the laws (statutes) or rules. **This course does not replace legal counsel.** Check the relevant statutory language and obtain legal counsel when you have questions about the application of the statutes or rules.

It is up to you to keep informed of any changes to relevant law. We suggest that you check with the Board to find out if an updated edition has been published since the date shown on the cover of your file copy of the Laws and Rules. Keep a current edition on hand for your reference at all times so that you may find answers to any questions that may arise and so that you understand the limits of your scope of practice and practice within the law.

For a more complete understanding, refer to the current edition of the Laws and Rules for massage therapy practice published by the Board of Massage Therapy, Department of Health, Division of Medical Quality Assurance, State of Florida. If you do not have the most current official publication of the Statutes and Rules for massage practice, then request a free copy from the Board. You may reach the Board by phone: 850-488-0595 or 850-245-4161, or by mail: Board of Massage Therapy, 4052 Bald Cypress Way, BIN # C06, Tallahassee, FL 32399-3256 to request a copy. If you have Internet access, download or print the current version at www.doh.state.fl.us/mqa/massage/ma_statutes.html.

Florida Statutes - Chapter 480 MESSAGE PRACTICE ACT

480.031 Short Title

The “Massage Practice Act” specifically focuses on the practice of massage and was developed for licensed individuals who administer massage therapy. Other licensed health professionals who do not practice massage should refer to laws relevant to their own areas of practice.

480.032 Purpose

Because the practice of massage therapy could potentially be harmful, as demonstrated by the need for therapists to have knowledge of how anatomy, physiology, structure and function of the tissues being treated relate to the total function of the body, the state regulates the practice to protect the public from unqualified practitioners.

The intention of this act is to protect consumers from potential harm and to provide them with legal remedies if they suffer harm physically or economically as a result of massage malpractice, while not preventing massage therapists from practicing. The legislature recognizes the remedies provided for in this act to insure consumer protection.

480.033 Definitions

This section gives you definitions of the terms you will encounter as you read.

Massage: manipulating the superficial tissues of a person’s body with a hand, foot, arm, or elbow. Manipulation may be aided by hydrotherapy (which includes colonic irrigation), thermal therapy, a mechanical or electrical device, or applying a chemical or herbal preparation to the human body.

Massage therapist: a person who is licensed by the State of Florida to practice massage therapy and is paid for their services. In this act, someone who is not licensed in the state of Florida, or whose establishment is not licensed, is called a “practitioner.” NOTE: In Florida, practitioners are NOT licensed massage therapists.

Apprentice: a person approved by the Board to study massage under the instruction of a licensed massage therapist.

Colonic irrigation: a method of hydrotherapy that cleanses the colon with the aid of a mechanical device and water.

Establishment: the place (or premises) in which a licensed massage therapist practices massage.

Licensure: the process where a “practitioner” applies to the Board for approval to practice massage or to operate a massage establishment.

Board-approved massage school: to be board-approved, a massage school must be licensed (under Chapter 1005) by the Department of Education or a similar licensing authority of another state, or a school must be within the public school system of the State of Florida; plus it must meet certain standards for training and curriculum as determined by the Board.

480.034 Exemptions

This law does not affect other listed chapters of Florida statutes. If you are a healthcare practitioner but not a massage therapist or the owner of a massage establishment license, then your profession may be exempt from these laws and rules. For example, if you are an athletic trainer for a professional team performing or training in Florida, then the massage laws and rules do not pertain to you. The state and its political subdivisions are exempt, and if you have a practice or profession that overlaps with massage, you are exempt.

480.035 Board of Massage Therapy

(1) The Governor appoints seven people as members of the Board of Massage Therapy to carry out all the provisions of the Massage Practice Act.

(2) Out of these seven members, five of them must be licensed massage therapists, each with at least five consecutive years of practical experience. The other two members of the Board are laypeople.

Each of the seven Board members must:

- be a high school graduate or have a graduate equivalency diploma
- be a U.S. citizen
- have lived in Florida for at least five years

Each member appointed serves a term of four years. The members appointed by the Governor are approved or confirmed by the Senate before they become “official” members of the Board.

(3) No Board member can serve more than two terms, whether those terms are full or partial. If there is a vacancy on the Board with an unexpired term remaining, the Governor can appoint someone to fill that seat for the rest of that unexpired term. When a Board member’s term expires, he or she stays on until a successor is appointed and confirmed.

(4) Each January, the Board elects one of its members as chair, and another as vice-chair.

(5) In addition to its annual meeting, the Board meets at other times and these meeting dates and times are determined by the chair. To hold a meeting, a quorum of at least four members must be present so that if a vote is taken, at least four out of the seven Board members are present to vote.

(6) The Board members are paid a daily fee plus mileage from their home to the place of the meeting and back home again.

(7) The Board can create or enact any new rules as necessary to make sure the rules in this chapter are followed.

480.036 Accountability of Board Members

If, according to a complaint or report filed against a Board member, the Board member neither follows the rules in this chapter, nor performs his or her duties well, then the Governor must arrange an investigation and may remove the Board member or take appropriate actions in the event there is a finding of malfeasance, misfeasance, commission of a felony, neglect of duty, incompetency or some permanent inability to perform official duties.

480.039 Investigative Services

The Department can and will provide any and all investigative services required to enforce any of the provisions in this act.

480.041 Massage Therapists: Qualifications; Licensure; Endorsement

(1) To be licensed in the State of Florida as a massage therapist under this act, a person must:

- Be at least 18 years old or have received a high school diploma or graduate equivalency diploma;
- Complete either a Board-approved massage school program or an apprenticeship program that meets standards set by the Board; and, lastly,
- Successfully pass a test (also called an exam or examination), which is administered by the Department.

(2) If you want a license to practice massage in Florida, the first step is to fill out the proper application form. To get this form or any other form related to the Statutes and Rules of Massage Practice, either download the form from the Internet site mentioned earlier, or contact the Department by phone or mail.

If the Board finds you to be eligible, your second step is to sit for an exam administered by the Department. Applicants are subject to the same disciplinary actions as licensees, which are listed in Section 480.046(1) of the Florida Statutes.

(3) After passing the examination and paying the appropriate fee, the Department issues a license. This license allows you to practice massage until the next scheduled renewal date.

(4) It is the Board's responsibility to decide the rules that address procedural questions and concerns, such as:

- How long is the minimum training program for apprentices?
- What are the educational standards, examination and certifications for the practice of colonic irrigation?
- What should the licensing procedures be for practitioners who are licensed in another state or territory of the USA, or a foreign jurisdiction?

480.0415 License Renewal

Massage therapists in Florida renew their license at the end of their biennial licensure term. (“Biennial” describes a period of two years.)

The Board has the power to decide methods for license renewal and approval of continuing education courses, including whether those credits are earned through classroom or distance learning courses. Currently, the Board is restricted to mandating up to 25 hours of continuing education per biennium. [See Rule 64B7-28.009 for current Continuing Education requirements.]

480.042 Examinations

(1) The Board decides on what subjects you will be tested during the licensure examination. The Board also decides how the grading will be performed, and what would be considered a passing grade. The Board shall ensure tests adequately measure competency; the Board can decide whether or not to use an examination prepared by a professional testing agency.

(2) The Board makes sure that state and federal equal employment opportunity guidelines are met regarding the examinations.

(3) After the Board sets up the rules for examination, the Department administers the examination to all applicants for licensure. The examination, or test, must be made available for applicants to take at least once a year, and at other times as deemed necessary by the department.

(4) If you fail the examination, then there are rules that allow you to take the test again. The Board determines those rules.

(5) While you are being tested, you are considered “anonymous”; in other words, you are known by the Department only as a number and not by your name. After you take the test, your examination papers, record and grade are kept on file by the Department for not less than two years.

480.043 Massage Establishments; Requisites; Licensure; Inspection

(1) If you want to set up a site where you or another licensee will administer massage to clients, then you would have to apply to the Department to get a massage establishment license. This would be in addition to the licenses required for each individual massage therapist who practices at the site of the establishment. The Board adopts the rule for this form of licensing.

(2) The Board adopts rules that every massage establishment must follow. For example, there are rules about the facilities, personnel, safety and sanitation, financial responsibility, insurance coverage, and the license application and license process.

(3) To get a massage establishment license, you will need to fill out the appropriate application. You may be an individual, corporation or a firm to hold a license as an establishment. Contact the Department to get the current application form. After you complete the application (as the owner of the establishment), you will

need to submit it to the Department for filing, along with the appropriate application fee.

(4) When you complete the application and file it with the Department, the Department may investigate the establishment you want to have licensed.

(5) If the Department decides not to grant the massage establishment license, then you will be notified in writing with the reasons for the denial. You can correct any problems and reapply for the license.

(6) If the Department is satisfied and finds everything to be in order, then the Department will grant the massage establishment a license after the licensing fee is paid. The license may be granted with certain restrictions.

(7) Regarding massage establishments:

- When you have your massage establishment license and then later sell or transfer your business, you will not be able to transfer your establishment license to the new owner.
- However, you can transfer your establishment license to a new location, only after an inspection and approval by the Board. A special application and inspection fee (which cannot be more than \$125) must also be submitted prior to inspection and approval.
- You can change the name of your business and have the name on the establishment license changed, with prior approval from the Board and payment of the appropriate fee (which cannot be more than \$25).

(8) The Board makes the rules regarding renewals of licenses for massage establishments, including renewal of delinquent licenses and related penalties.

(9) The Board is authorized to adopt rules about the periodic inspection of licensed massage establishments.

480.044 Fees; Disposition

(1) Regarding fees paid to and collected by the Department, the Board determines the amount of these fees. However, the Board cannot make these amounts too high, so the amounts are limited by maximums, such as:

- Massage therapist application and examination fee cannot be more than \$250.
- Massage therapist initial licensure fee cannot be more than \$150.
- Establishment application fee cannot be more than \$200.
- Establishment licensure fee cannot be more than \$150.
- Biennial establishment renewal fee cannot be more than \$150.
- Biennial massage therapist licensure renewal fee cannot be more than \$200.
- Massage therapist re-examination fee cannot be more than \$250.
- Fee for apprentice cannot be more than \$100.
- Colonic examination fee cannot be more than \$100.

- Colonic re-examination fee cannot be more than \$100.
- Renewal fee for changing from inactive status to active status cannot be more than \$250.
- Renewal fee of inactive status cannot be more than \$250.

(2) If a massage establishment is late to renew its establishment license, the Department can impose a late fee that cannot be more than \$150.

(3) The Board may decide to charge providers of continuing education for approval of courses; that fee cannot be more than \$100. If a provider wants to renew its approved status, the fee which is set by the Board cannot be more than \$50.

(4) If a massage therapist or an establishment requests a duplicate license or permit, the Department can charge the same amount as the original license or permit, for the duplicate.

(5) All the money collected by the Department from fees is deposited into a special account, known as the Medical Quality Assurance Trust Fund and used in accordance with Section 456.025. Any excess money from this fund can be appropriated by the Legislature, and transferred to the General Revenue Fund.

480.046 Grounds for Disciplinary Action by the Board

If you commit any of the acts described in the first part of this section, known as subsection “1”, then the Board can take disciplinary actions against you as described in the second part, which is known as subsection “2”.

(1) In the ethical practice of massage therapy, making improper decisions or taking the following actions is grounds for denial of a license or disciplinary action as specified in 456.072(2):

- Trying to get a license by bribery or fraudulent misrepresentation.
- Having your license in another state or country or territory revoked or suspended, etc., or denied.
- Being convicted of a crime anywhere, if your crime relates directly to the practice of massage or your ability to practice massage. This includes a plea of “nolo contendere.”
- Advertising in a false, misleading or deceptive way.
- Aiding, assisting, procuring, or advising someone to practice massage who is not licensed to practice massage.
- Telling people untrue information in your capacity as a massage therapist.
- Failure to use appropriate skill or safety while you are practicing massage due to the consumption of drugs, alcohol, etc., or as the result of a mental or physical condition. In this event, the massage therapist can be required to submit to a physical or mental exam. Failure to do so will be deemed an admission of the allegations against them. Someone whose license has been revoked due to these

circumstances may apply at reasonable intervals for the opportunity to demonstrate that he/she should be allowed to practice.

- Failure to practice massage with an appropriate level of care, skill and treatment or gross or repeated malpractice.
- Performing or offering to perform responsibilities that are outside the scope of practice of massage therapy or outside the competency of the therapist.
- Delegating responsibilities to a person who, knowingly, is not qualified, trained, or licensed to perform those kinds of responsibilities.
- Failure to comply with the provisions of this law, failure to follow the rules of the Department or an order of the Board or Department from a disciplinary hearing, or failing to respond to a lawful subpoena issued by the Department.
- Failure to allow the Department to inspect your offices where you practice massage, during normal business hours.
- Failure to keep your equipment or your massage establishment premises clean and sanitary.
- Practicing massage on site, location or place which is NOT a licensed massage establishment, with the following exceptions: at a client's home, a client's office, a sports event, a convention, or a trade show. Colonic irrigation is excluded; in other words, colonic irrigation cannot be performed anywhere except at a licensed massage establishment.
- Violating any part of Chapter 480 or Chapter 456 of the Florida Statutes, or any rules based on these statutes.

(2) If you or another massage therapist are found to have committed one of the activities mentioned in "1" above, or having violated any part of Section 456.072(1), then the Board may impose one or more of the penalties, which are taken from Chapter 456, Section 456.072(2), listed below as a reference:

- Refusal to license an applicant.
- Suspension or permanent revocation of a license.
- Issuance of a reprimand or censure.
- Imposition of a fine not to exceed \$10,000 for each count or separate offense.

(3) The Board can also revoke or suspend a massage establishment license or deny subsequent licensure if:

- The license was proven to be obtained by fraud or not telling the truth (misrepresentation).
- The holder of the license is proven guilty of fraud, deceit or gross negligence, incompetency, or misconduct in operating the licensed establishment.

(4) If you want to learn about the manner in which disciplinary proceedings will be conducted, contact the Department (or visit a massage school library or a law library in Florida) for a copy of Chapter 120 of the Florida Statutes.

480.0465 Advertisement

Each massage therapist or massage establishment licensed under the provisions of this act shall include the number of the license in any advertisement of massage services appearing in any newspaper, airwave transmission, telephone directory, or other advertising medium. If you are awaiting approval of your massage establishment license, then you can use your massage therapy license number as long as you are an owner or principal officer. (For more details see Rule 64B7-33.001 of the Florida Administrative Code.)

480.047 Penalties

(1) It is against the law if you:

- Act as if you are a massage therapist or if you practice massage therapy without being licensed or duly exempted.
- Operate a massage establishment without a license (however, you can teach massage at a Board-approved massage school).
- Allow one of your employees to practice massage without a license to practice massage.
- Display or show someone else's valid massage license as though it is your own.
- Let someone who is unlicensed use your valid license.
- Lie or forge any documents that you are presenting to the Board, in order to get a massage license.
- Pretend you are some other licensed person.
- Use your license when it has been revoked.
- Otherwise violate any other provisions.

(2) Someone violating this section is guilty of a misdemeanor of the first degree, punishable as provided in Sections 775.082 and 775.083.

480.0485 Sexual Misconduct in the Practice of Massage Therapy

Sexual misconduct is prohibited. Never use your professional relationship with a client to try to induce him or her to participate in any sexual activity.

480.049 Civil Proceedings

If you or any other person violates any part of this act, or the laws and rules and orders of the Department, then the Department may seek a restraining order, injunction, or order you to turn yourself over for prosecution or other proceedings.

480.052 Power of County or Municipality to Regulate Massage

Counties or municipalities can enact any regulations of massage therapists or massage establishments as long as they keep consistent with these laws and rules and don't try to exceed the powers of the state nor be inconsistent with this act. Counties or municipalities can establish regulations if the person or establishment is not licensed by this act.

Rule Chapter 64B7 FLORIDA ADMINISTRATIVE CODE

This entire chapter is concerned with the Florida Administrative Code. For more details than the Department provides in its “Laws and Rules,” go to a law library and consult the complete Florida Administrative Code. The following is a summary, but it does not include the exact text of the Code. Therefore, please refer to the Code for any specific item of concern to you. The exact text of the Code will prevail over any interpretation of it. The following summary does not include references to all sections of the chapters listed below. It also does not replace legal counsel.

Chapter 64B7-24 **ORGANIZATION**

Rule Chapter 64B7-24 primarily covers the organization of the Board and its operation. It includes guidelines for disciplinary cases and sets the time for payment of civil penalties imposed by the Board. Board members find this section of Rule Chapter 64B7 to be invaluable because it talks about the administration of their duties.

If you are interested in learning more about the organization of the Board and its business, read this part of the chapter in the Laws and Rules (obtained from the Board) or the Florida Administrative Code (a complete version of which can be found in a Florida law library, or downloaded from the Florida Department of Health’s website at www.doh.state.fl.us).

Chapter 64B7-25 **EXAMINATION**

64B7-25.001 Examination Requirements

(1) The Department shall issue a license to a person who:

- Pays an appropriate fee;
- Completes a massage program of study at a massage school approved by the Board, or completes an approved apprenticeship program;
- Completes the HIV/AIDS course requirement;
- Passes an approved national examination; and
- Completes a course in the prevention of medical errors.

(2) The approved examination used by the Florida Board of Massage Therapy is that of the National Certification Board of Therapeutic Massage and Bodywork (NCBTMB).

64B7-25.0011 Colonic Irrigation Application Deadline

Whether you are applying for a colonic irrigation examination or a re-examination, you must include with your application proof of completing either an approved course of study or an approved apprenticeship at least 45 days before taking the exam. You will have to pay the appropriate fee for the examination or the re-examination, whichever is applicable to you and your circumstances.

64B7-25.0012 HIV/AIDS Course Required for Initial Licensure

Before your initial license can be granted, you must complete a Board approved 3-hour educational course regarding HIV/AIDS.

64B7-25.004 Endorsements

(1) The Department shall issue a license by endorsement to a person who:

- Pays the initial licensure fee;
- Is currently licensed and practicing massage in another state, which has standards of training that are similar to, equivalent to, or more stringent than those of the State of Florida;
- Has passed an examination comparable to that of Florida's; and
- Has no unresolved complaints filed in the jurisdiction of licensure.

(2) To decide whether you qualify for licensure by endorsement, the Department may require an interview.

64B7-25.006 Expiration of Incomplete Applications

When you apply for your initial license you must submit all of the required items for your application within one year from the date the application was originally received by the Department, otherwise your application will expire and your file will be closed.

Chapter 64B7-26

MASSAGE ESTABLISHMENTS

64B7-26.001 Definitions

(1) Owner: the sole proprietor, partnership, limited partnership or corporation that operates the licensed massage establishment

(2) Establishment: the site or premises (or portion) where a licensed massage therapist practices massage for compensation. The term "Establishment" does not mean the location where massage is practiced if it is within another health care provider's office

(3) Business name: the name that is used when applying for an establishment license if it is different from the owner's name

64B7-26.002 Licensure of Massage Establishments

For you to apply for a massage establishment license, you must be the owner or legal agent to apply for this license. The owner would apply either as a sole proprietor, partnership, limited partnership or a corporation.

(1) Use Form No. BMT3 (Rev. 7/97) to apply for a massage establishment license, and pay the appropriate fee as stated in Rule 64B7-27.003. All massage establishments are required to be licensed.

(2) The owner of the establishment will put his or her own name on the application. Of course, if the owner is a corporation (the application is submitted in the name of the corporation), then one of the authorized corporate representatives signs the application on behalf of the corporation.

(3) The business owner may use a business name to conduct business. For example, the business name may be “ABC Massage Center”, and the owner might be “Jane Smith”. In this case, before applying to the Department for a massage establishment license, Ms. Smith would have to register the name “Jane Smith d/b/a ABC Massage Center” (“d/b/a” means, doing business as) and obtain a registration number. Afterwards, she would apply for a massage establishment license in the name of the business and show the business name registration number on her application for the massage establishment license. When advertising her business, Ms. Smith has to include the exact same name as appears on the license, in the advertisement.

(4) When applying for a massage establishment license, submit proof that you have property damage and bodily injury liability insurance coverage. If you use a business name to operate your business, then your proof of insurance should show both your name (“Jane Smith”) as well as the name of the business (“ABC Massage Center”).

64B7-26.003 Massage Establishment Operations

(1) Facilities: Your massage establishment has to be maintained and operated in a safe and sanitary manner. Make sure your premises comply with all local building codes. Keep the bathroom facilities clean and stocked with soap and other necessary supplies. Your bathroom must have a sink with running water and a toilet. You must keep toilet tissue, a soap dispenser with soap (or other hand cleaning material), some kind of towels or a hand-drying device, and a wastebasket. If your establishment is not in a mall or other large public place, you’ll need a bathroom in your massage space. However, if your establishment is located in a mall or under one roof with other businesses, then the centralized toilet facilities have to be no more than 300 feet from your massage establishment. If you have a whirlpool bath, sauna, steam cabinet or steam room, then you must also have a clean shower facility on your premises.

(2) Personnel: If a massage client is in a treatment room, a licensed massage therapist must be on the premises of the establishment.

(3) Safety and Sanitary Requirements:

- doorways in and out of the building must be free of hazards and obstructions
- remove garbage and safely store or remove flammable materials
- keep a fire extinguisher on hand which meets State Fire Marshal standards of being in “good working condition”
- exterminate vermin, insects, termites and/or rodents on the premises
- keep a clean, sanitary environment for massage sessions
- use cleansers and bactericidal agents *regularly* to clean the massage table (“Regularly” means after each client, unless the table is draped, then the massage table should be cleaned daily or whenever massage oils have accumulated.)
- wash the sheets, towels, gowns and other linens after each client’s use
- towels, gowns or sheets must be clean for each client
- wash all linens used during massage after every massage
- have either a lavatory or a chemical germicidal product for disinfecting your hands within 20 feet of the treatment area
- keep the bathroom and shower facilities well lit, in good repair, and ventilated

(4) Financial Responsibilities and Insurance Coverage: Each establishment must have property damage and bodily injury liability insurance coverage. Keep either the original or a copy of each policy on the premises at all times.

64B7-26.004 Inspection Upon Application for License

Upon application for massage establishment licensure, the Department will come to inspect the premises to determine compliance with 64B7-26.003, FAC.

64B7-26.005 Periodic Inspections

Inspections of your premises will be made at least once a year to make sure you are meeting all the required standards.

64B7-26.007 Transfer of Massage Establishment License

(1) If you decide to change the name of your business, but you are not changing ownership or location, then you will need to complete and submit an Application for Licensure-Massage Establishment (Form BMT3, effective 1/98), together with an application fee (see Rule 64B7-27.003(2)). However, new establishment inspection is not necessary.

(2) If you are changing the location of your business but are not changing ownership, then you can transfer the license from one location to another location. To change location, you will need to complete and submit the same form mentioned in “1” above (Application for Licensure-Massage Establishment, Form BMT3, effective 1/98), together with the fee shown in Rule 64B7-27.003(3). In this case, the Department must inspect the new premises before the license can be transferred.

64B7-26.010 Sexual Activity Is Prohibited

Absolutely no sexual activity whatsoever is permitted in any massage establishment. A massage establishment is not the place for any person to engage in any sexual activity, nor is it the place to make arrangements for anyone to engage in sexual activities at another location.

Chapter 64B7-27

FEE SCHEDULE

64B7-27.002 Application for Licensure; Fees

- (1) Application for licensure includes a \$50 non-refundable application fee.
- (2) The Colonic examination fee is \$100, and the re-examination fee is \$100.

64B7-27.003 Massage Establishments

- (1) Application for licensure of an establishment is \$150.
- (2) If you want to change the name of the business on an establishment license, the fee is \$25.
- (3) If you are to transfer the establishment license from one location to another, then the application and inspection fee for transfer is \$125.

64B7-27.004 Re-examination

- (1) To retake the Board approved national examination, the fee is the same as the original examination.
- (2) To retake the Colonic examination, the fee is the same as the original colonic examination.

64B7-27.005 Apprentice

The fee to apply for apprenticeship is \$100.

64B7-27.006 Biennial Renewal Fee for Massage Therapists

The fee to renew your massage therapist's license at the end of the biennial renewal period is \$150.

64B7-27.007 Biennial Renewal Fee for Massage Establishments

The fee to renew your massage establishment's license at the end of the biennial renewal period is \$150.

64B7-27.008 Initial Fee for Licensure

Pursuant to Rule 64B7-25.001, the initial fee for licensure is \$150. Pursuant to Rule 64B7-25.004, the initial fee for licensure is \$150.

64B7-27.010 Renewal Fee for Inactive License

To renew an inactive license, the fee is \$150.

64B7-27.011 Reactivation Fee for Inactive License

To reactivate an inactive license, the fee is \$150.

64B7-27.012 Licensure of Establishment Fee

To license an establishment, the fee is \$150.

64B7-27.014 Duplicate License Fees

To get a duplicate massage therapist license, the fee is \$25; to get a duplicate massage establishment license, the fee is also \$25.

64B7-27.015 Delinquency Fee

The delinquency fee, payable when you file late, is \$150.

64B7-27.016 Change in Status Fee

The change in status fee is \$50.

64B7-27.017 Unlicensed Activity Fee

When applicable, in addition to the initial license fee and license renewal fee, a fee of \$5 will be collected from each applicant or licensee to fund efforts to combat unlicensed activity.

Chapter 64B7-28***BIENNIAL LICENSE RENEWAL (Part 1)*****64B7-28.001 Biennial Renewal of Massage Therapist's License**

(1) Every massage therapist has to renew their license on or before August 31st of each odd numbered biennial year (the second year of your two-year term). See 64B7-28.003 for definition of biennial year.

(2) To renew your license, you will need to have continuing education credits, including an approved class on transmission, control, treatment and prevention of human immunodeficiency syndrome (HIV/AIDS). For more details on the course content for the HIV/AIDS class, see Rule 456.034.

(3) In addition, part of the continuing education hours you are required to take must include at least 2 hours related to the prevention of medical errors. The two hours count toward the total number of continuing education hours required for renewal. The course must include a study of root-cause analysis, error reduction and prevention, and patient safety.

64B7-28.0015 Place of Practice Defined

(1) You must give the Board your current mailing address as well as a place where you practice massage, if different. If you travel to administer massage only at the homes of your clients, then use your home address as your place of practice address. If you use several locations to practice, select one of them for the purpose of being your place of practice.

(2) The Board considers a “place of practice” as:

- A massage establishment, which is maintained by you; or
- The massage establishment where you provide massage therapy; or
- A medical office where you provide massage services; or
- Any one location at which you practice, if you practice at more than one; or
- Your home address if you only travel to your client’s residence to provide massage therapy services.

64B7-28.002 Biennial Renewal of Massage Establishment License

Massage establishments must renew their licenses on or before August 31st of each odd numbered biennial year. As the holder of a massage establishment license, you should review Chapter 480 to be sure you have met all the requirements for license renewal. See Rule 64B7-27.007 for details on the fee to renew; see also the Rule 64B7-26.002(4) for the insurance coverage requirements.

Your business establishment must renew on time or be considered delinquent and subject to criminal penalties, as you previously learned in Section 480.047(2). To renew a delinquent license, you will also have to pay the current delinquency fee (see Section 480.044(2)) as well as the \$75 late fee for delinquent renewal plus the biennial renewal fee (see Rule 64B7-27.007).

64B7-28.003 Biennial Period, Year Defined

The biennial period begins on September 1st of each odd-numbered year, and ends on August 31st of each odd-numbered year.

A “*biennial year*” is every odd-numbered year, such as 2001, 2003, 2005, 2007 etc.

64B7-28.0041 Inactive Status and Renewal of Inactive Status

(1) You have the option to apply to place your license into inactive status at any time, by completing and submitting a Department application along with the appropriate fee (see Rule 64B7-27.010).

(2) Inactive licenses must be renewed biennially including payment of the appropriate fee.

(3) Your inactive license can be reactivated at any time provided the licensee meets Rule 64B7-28.0042.

(4) An inactive licensee who changes to active status is not permitted to return to inactive status until the next biennial renewal period.

64B7-28.0042 Requirements for Reactivation of an Inactive License

(1) You can reactivate an inactive license as long as you pay the reactivation fee and submit proof that you completed the required continuing education requirements found in Rule 64B7-28.009.

(2) However, there are certain situations that require additional actions to reactivate your license. For example, if you did not practice any massage for two out of the previous four years in another jurisdiction and if your Florida license had been inactive for more than two consecutive biennial licensure cycles, then you would have to appear before the Board to establish your ability to practice with sufficient skill. You must show the Board that you completed the required continuing education credits, report any massage therapy activities during the inactive licensure period, and also show an absence of any malpractice or disciplinary actions pending anywhere, and prove compliance with certain sections of the Florida Administrative Code.

(3) The Department can deny reactivation of your license if you committed an offense that should be disciplined, did not complete continuing education requirements, or did not take an HIV/AIDS course.

64B7-28.0043 Delinquent Status License

(1) If you fail to renew your license on time, and you do not elect the inactive status before the renewal period ends, then your license would be considered delinquent.

(2) During the licensure cycle in which your license became delinquent, you must apply either for active or inactive status. Failure to renew or make your license inactive before the expiration of that licensure cycle renders your license null and void.

(3) To renew or make your license inactive, while it is considered delinquent:

- Apply for either license renewal or inactive status.
- Pay special fees. See the renewal fee in Rule 64B7-27.006 or the inactive status fee in Rule 64B7-27.010. See also the delinquency fee in Rule 64B7-27.015 and the change of status fee in Rule 64B7-27.016. (All the fees are shown on previous pages in this course text.)
- Present documentation that you have all the required continuing education credits for the inactive period (see Rule 64B7-28.009).

64B7-28.007 Exemption of Spouses of Members of Armed Forces from Licensure Renewal Provisions

If you are married to a member of the Armed Forces, and you were in good standing with the Board of Massage Therapy to practice massage in Florida, and you had to leave Florida for a period of at least six consecutive months because of your spouse's duty, then it is OK if you are late to renew. Be prepared to show proof of your spouse's military status as well as proof of your absence (because of his or her duties) when you later want to renew your license.

64B7-28.008 Display of Licenses

(1) Display the original or a photocopy of your massage therapy license so it can be easily seen at each location of your practice.

(2) If you are an apprentice, display your Board-issued apprentice certificate where it can be easily seen in the establishment for which it has been issued.

(3) The owner of a massage establishment must display the current massage establishment license in a place where it can be easily seen.

***Rule Chapter 64B7-28
BIENNIAL LICENSE RENEWAL (Part 2)***

64B7-28.009 Continuing Education

(1) When you renew your license in Florida, you have to be able to show that you completed one continuing education hour for each month (or part of a month) that has elapsed since you were issued your license, up to a maximum of 24 hours, during the biennial period (2 years). Graduates of a Board-approved massage school who completed two hours of professional ethics and two hours in Florida Law (covering Chapters 480 and 456 of the Florida Statutes as well as Rule Chapter 64B7 of the Florida Administrative Code) prior to initial licensure do not have to complete additional ethics or law continuing education for their initial license renewal. Continuing education programs must be administered by approved providers, and each continuing education course must be approved as well. All continuing education credits must be completed within the 24 months preceding the date your renewal is due.

(2) All the continuing education credits can be met by home study courses, including those that include video or audio cassette materials. The only conditions are that:

- you must take a home study test and receive verification of your test scores
- any video programs viewed, as part of a course, cannot exceed five (5) hours in length per subject or course
- these courses must meet the requirements of Rule 64B7-28.010, which follows shortly on subsequent pages in this course [See Rule 64B7-28.010(2)(c) and (d).]
- the verification and validation of home study course(s) must clearly indicate that the course is a “correspondence/home study course/tape or videocassette course”, and that the licensee passed the course in order to be accepted as proof of attendance

(3) For the biennium beginning September 1, 2001 you need continuing education hours in the following areas:

- A minimum of 12 continuing education hours in massage therapy techniques (which can include history of massage therapy, human anatomy, physiology, kinesiology, and/or pathology).
- A minimum of two continuing education hours in ethics, two hours in Florida law (covering Chapters 480 and 456 of the Florida Statutes and Rule Chapter 64B7 of the Florida Administrative Code) and two hours in the prevention of medical errors. The only exception would be if this was your initial renewal and you had

already taken two hours in Florida Law and professional ethics as stated in Rule 64B7-28.009 (1).

- In addition to the above subject matter described in “a” and “b”, the remaining hours may include courses on communications (with clients and other professionals), insurance reimbursement, or third party payment, psychological dynamics of the client-therapist relationship, risk management including charting, documentation, record keeping, or infection control (other than the HIV/AIDS course required in Section 456.033 of the Florida Statutes), or massage practice management. The remaining hours may also include a maximum of four hours in an approved course in adult cardiopulmonary resuscitation (CPR). You will still need to take a course on HIV/AIDS, which is required by Section 456.033 of the Florida Statutes, beyond the hours outlined here.

(4) Retain receipts, vouchers or certificates for every continuing education course you have taken for at least four years as documentation of the required continuing education for biennial license renewal.

(5) At the end of each biennium, the Board will conduct a number of randomly selected licensees to audit continuing education requirements and documentation. If you are audited by the Board, you will need to provide written documentation (within 21 days of the Board’s request) that you have met all continuing education requirements.

64B7-28.0095 Continuing Education for Pro Bono Services

(1) Up to 6 hours of continuing education per biennium may be awarded for the performance of pro bono services to the indigent, underserved populations or in areas of critical need within the state where the licensee practices. The standard for determining indigence shall be that recognized by the Federal Poverty income guidelines produced by the United States Department of Health and Human Services.

(2) In order to receive credit under this rule, the licensee must receive prior approval from the Board by submitting a formal request for approval, which must include the following information:

- The type, nature and extent of services to be rendered;
- The location where the services will be rendered;
- The number of patients expected to be served; and
- A statement indicating that the patients to be served are indigent, underserved or in an area of critical need.

(3) Credit shall be given on an hour per hour basis.

(4) Approval for pro bono services is only granted for the biennium for which it is sought. The licensee must request approval for each biennium they wish to receive credit for pro bono services.

64B7-28.010 Requirements for Board Approval of Continuing Education Programs

(1) To have any educational programs approved, a proposed provider must apply to the Board and provide evidence of compliance with the Board's requirements. The requirements a proposed provider must meet include:

- Submission of a provider application and program/instructor information form and payment of a non-refundable application fee of \$250. (See the Florida Administrative Code for the locations where the forms may be obtained.)
- Signing and abiding by an agreement regarding responsibilities as a continuing education provider. (See the Florida Administrative Code for the definition of these responsibilities.)

As a licensee enrolling in CE programs, what you will primarily want to know from this section is that your certificates of completion or attendance should include the provider's name and approved provider number, the title of the program, program number, instructor, date, number of hours of credit, and your name and license number (at the time of attendance or completion of the course). Before you enroll in a course, make sure the provider has an approved provider number issued by the Board, and the course in which you are enrolling has an approved course number as well.

(2) Once the Board has approved the program(s) of a Continuing Education provider, the provider must continue to follow the standards set by the Board and set out in the Florida Administrative Code (Rule 64B7-28.009 (2), paragraph (3) a, b, or c).

The following section is relevant to providers of continuing education credits. Requirements, including the learning objectives and the qualifications for the instructor of a course, are outlined here.

If you are interested in taking a course that has an approved course number and is offered by an approved provider, then the following criteria have already been successfully met to the satisfaction of the Board.

(3) The Board can audit or monitor programs to make sure the provider is abiding by the agreed upon standards.

(4) An "*hour of continuing education*" is at least 50 minutes of uninterrupted time spent learning the course material.

(5) Presenters and instructors of a course do not receive any credit for the time they spend presenting the course.

(6) Any new courses an approved provider wants to offer must first be approved by the Board before CE credits can be awarded. The approved course can be taught at any time as long as the materials in the course and the instructor do not deviate from what was originally approved.

(7) A Board approved provider must revise and update all course materials that are affected by changes occurring during the biennial renewal period. The Board will

rescind approval of any provider or course that is found to be obsolete, erroneous, and/or outside the scope of practice, or if the Board determines the provider has violated the Board's rules or Chapter 456 or 480, F.S. The revised course materials must be submitted with the biennial renewal form and renewal fee.

(8) Providers also have to renew biennially on or before August 31st of the biennial renewal year. The provider must fill out a form and pay a fee. If the provider is late to renew, the provider must submit a new application and receive a new provider number.

Chapter 64B7-29 ***APPRENTICESHIP***

64B7-29.001 Definitions

A person studying massage under the direct supervision of a sponsoring massage therapist ("sponsor") is considered an "apprentice". A sponsor has to have been actually practicing massage a minimum of three years prior to commencing the apprentice-sponsor relationship.

A proposed sponsor has to complete an application and submit it to the Board. This sponsor is responsible to control, direct, instruct and regulate only one apprentice at a time, at a qualified massage establishment.

A "*qualified massage establishment*" is the place where massage is taught and practiced, which has to be equipped with tables, linens and storage areas; colonic equipment (if applicable) with sterilization equipment or disposable supplies; and hydro-therapy equipment (cold packs, hot packs, and either a steam room or cabinet, sauna or whirlpool bath). You'll also need textbooks on physiology, anatomy, theory of massage, hydro-therapy, Statutes and Rules on Massage Practice and colonic irrigation equipment (if applicable).

64B7-29.002 Qualification

If you want to apprentice, then you'll need to have a sponsor, complete an application and pay a fee (see Rule 64B7-27.005). You must not be enrolled in a massage school at the same time as your apprenticeship.

64B7-29.003 Apprenticeship Training Program

(1) If you want to apprentice, you will need to know that your entire apprenticeship must take place in the qualified massage establishment, under the supervision of a sponsoring massage therapist.

(2) Training under the direct supervision of a sponsor must have duration of 12 months and it must be finished within 2 years from the date the apprenticeship training began. Within the first quarter of the apprenticeship training, the apprentice must complete:

- 100 hours of Physiology studies

- 100 hours of Anatomy studies
- 15 hours of study in Florida law, namely the Statutes and Rules of Massage Practice

(3) The entire Course of Study for Apprentices, which must include the material in “2(a)” above, must also include the following:

- 300 hours of Physiology
- 300 hours of Anatomy
- 20 hours of Theory and History of Massage
- 50 hours of Theory and Practice of Hydro-Therapy
- 5 hours of Hygiene
- 25 hours of Statutes and Rules of Massage Practice
- 50 hours of Introduction to Allied Modalities
- 700 hours of Practical Massage
- 3 hours of Board-approved HIV/AIDS instruction

(4) Each day of training, the sponsor must keep track of how many hours were spent training in each subject the apprentice completed that day. At least once within 12 months of beginning the apprenticeship, the Department will inspect these records.

(5) Each quarter, the sponsor must complete and submit a form that shows the number of hours taught for each subject. This form is called the Massage Apprenticeship Quarterly Report Hours of Training Completed. To get a copy, contact the Department of Health, Board of Massage at 4052 Bald Cypress Way, Bin #C06, Tallahassee, FL 32399-3256. If quarterly reports are not submitted, the Board will terminate it.

(6) If you are an apprentice, it is best to complete your apprenticeship program because if you quit before completing it, you will not be able to take the licensure exam for one year unless you enter a Board-approved massage school.

Also, if you had already graduated from a Board-approved massage school and you had taken the licensure examination, but failed it, then if you enter an apprenticeship and quit before finishing, and you wanted to retake the licensure examination, then you would have to wait for one year before you could take it again.

64B7-29.004 Termination

(1) If you terminate your apprenticeship, the sponsor has to notify the Department (on a special form) within 10 days.

(2) If the “qualified massage establishment” violates any rules of Chapter 480 or 456 of the Florida Statutes or Rule Chapter 64B7 of the Florida Administrative Code, the apprenticeship will be fined until the violation is rectified. If disciplinary action by the Board results, the “sponsor” and “apprentice” will appear before the Board to determine if the apprenticeship program violated Rule 64B7-29.003.

64B7-29.005 Extension of Apprenticeship

(1) You can extend your apprenticeship under certain conditions, such as: if you complete your apprenticeship, and your sponsor notifies the Department, then your apprenticeship can be automatically extended until you have been notified of your examination results, or

(2) If you fail the first exam after your apprenticeship was completed, you may get an extension with the agreement of your sponsor. In this case, failure to appear or to pass the exam will cause expiration of the extension.

64B7-29.006 Change of Sponsoring Massage Therapist

If your sponsoring massage therapist can no longer sponsor you for any reason the sponsor must notify the department by submitting a special form within 10 days. You don't lose credit for your previous apprenticeship training hours but you must find sponsorship from another sponsoring massage therapist if you wish to continue in the apprenticeship program.

64B7-29.007 Colonic Training Through Apprenticeship

(1) You can be instructed by a massage therapist in colonic only if you are licensed to practice massage, or are approved as an apprentice, or are a student in a Board-approved massage school.

(2) The instructor, called a sponsor, has to also be licensed and authorized to practice colonics, and has to have actively practiced for at least three years already.

(3) The training has to be in a qualified massage establishment that has colonic equipment with disposable colonic attachments or sterilization equipment on the premises.

(4) A licensee or apprentice who wants to receive colonics instruction will need advance approval by filing a "colonics only" apprenticeship application and paying the appropriate fee. An unlicensed applicant for apprenticeship may apply for colonics training approval in addition to course work (see Rule 64B7-29.003).

(5) You will have to complete the colonics training within 24 months of approval by the Department.

(6) Your sponsor will have to certify (on a special form) that you completed 100 hours of training, including 45 hours of clinical practicum.

Chapter 64B7-30

DISCIPLINE

64B7-30.001 Misconduct and Negligence in the Practice of Massage

The first part of this rule is concerned with the nature of misconduct. Here is a list of actions that would be considered to be misconduct in your practice of massage:

(1) Administering massage treatments in a negligent manner.

(2) Violating client confidentiality.

(3) Offering massage therapy at a sports event, convention or trade show without getting written permission to do so from the owner or the manager of the site.

(4) Failure to explain draping techniques to a client (meaning the use of towels, gowns, sheets or clothing to cover the client discreetly).

(5) Failure to properly drape a client (you should cover the buttocks and genitalia of all clients as well as the breasts of a female client, unless a client gives specific informed consent to be undraped).

64B7-30.002 Disciplinary Guidelines

(1) If you commit any of the acts of misconduct or negligence, which are specified in Sections 480.046, 480.047, 480.0485, and 456.072 of the Florida Statutes (obtained from the Board), then be prepared to pay a fine, be placed on suspension, and/or have your license revoked entirely. For an extensive list of the recommended penalties, see the specific disciplinary guidelines listed in Rule 64B7-30.002 in your copy (obtained from the Board) of the Statutes and Rules for Massage Practice.

(2) If a massage establishment managed to obtain a license by means of fraud or misrepresentation, then that license would be revoked, and the holder of that license could not reapply for another license for two years.

(3) For individuals, the fines and other disciplines for misconduct and/or negligence could be lessened due to certain circumstances that might exist at the time. For example, the degree of danger the misconduct presented to the public, the length of time since the violation, the number of times the individual had been previously disciplined by the Board, and the effect of the penalty upon the individual's ability to make a living. Refer to the complete list in your copy of the Statutes and Rules for Massage Practice.

(4) If the Board finds that someone, prior to obtaining their license, has committed any of the acts that are specified in Sections 480.047 and 456.072 of the Florida Statutes, then the Board can:

- Refuse to certify, or to certify with restrictions, an application for a license.
- Suspend or permanently revoke a license.
- Restrict a practice.
- Impose a fine of \$10,000 maximum for each count or separate offense.
- Issue a reprimand.
- Place the licensee on probation and require the licensee to undergo treatment or attend continuing education programs, etc.
- Issue some other corrective action.

(5) The Board is not limited to just the disciplinary actions in "1" through "4" above.

(6) The Board can also pursue, or suggest that the Department pursue, other legal actions.

(7) If the Board imposes any monetary fine, then it also suspends the license until the fine is paid. But the Board does not want to limit your ability to pay the fine by taking away your ability to work as a massage therapist; so the Board puts a “stay”, which is like a temporary hold, on the action to suspend until the fine is paid. The Board will not enforce the suspension if the fine is paid on time. If the fine is not paid on time and the Board suspends the license, then the Board will lift the suspension when the fine is paid.

If a money fine is imposed, then the license could be suspended (at the very least) until the fine is paid. The exception could be made to enable you to work to make money to pay the fine, in which case the suspension could be stayed temporarily.

(8) “*Compensation:*” Whenever a massage therapist renders massage therapy services, any payment for those services is considered compensation; this can include payment of money and/or an exchange of any valuable goods or services.

64B7-30.004 Citations

(1) A “citation” is the paperwork that is served on you (as a licensee, holder of a massage establishment license, or as an applicant) regarding fines or other corrective actions to be imposed. This rule tells you the grounds for violations as well as the fines that could be imposed for these violations. We suggest you review these in your copy (obtained from the Board) of the current Laws and Rules so you are informed about them.

64B7-30.005 Mediation

Mediation is only available if it is a first offense for:

- (1) Practicing on a delinquent license
- (2) Failure to timely respond to a continuing education audit

64B7-30.006 Notice of Noncompliance

Reserved for violations that do not cause harm or threaten harm to anyone; a “notice of noncompliance” would be sent to you by the Department the first time you violated any of the following:

- (1) If you moved and failed to provide written notice of your new mailing address or place of practice address; 64B7-28.015, F.A.C.
- (2) If you failed to take a continuing education course in HIV/AIDS; Section 456.034, F.S.
- (3) If you failed to have proof of insurance at a massage establishment; 64B7-26.003(4), F.A.C.

(4) If you failed to include license number or numbers in any advertisement;
64B7-33.001, F.A.C.

64B7-30.007 Probable Cause Panel

A determination of probable cause will be made by the probable cause panel of the Board. The panel consists of two members and possibly a former Board member, appointed by the Chair.

64B7-30.008 Probationary Conditions and Definitions

(1) If your license is placed on probation or is restricted in a manner that requires you to practice under indirect supervision, the monitoring therapist does not have to practice on the same premises as you but must practice within 20 miles unless otherwise specified by the Board. The monitoring therapist must also be available for consultation.

(2) If your license is placed on probation or is restricted in a manner that requires you to practice under *direct supervision* you may only practice if the supervisor is on the premises.

(3) The following are the rules for all supervised or monitored practitioners.

- The supervisor or monitor will be given all relevant documentation and orders.
- The practitioner being supervised will not practice without a supervisor/monitor unless the Board states otherwise. The practitioner must go to the next Board meeting with the proposed supervisor/monitor unless the Board states otherwise.
- After the next Board meeting, the practitioner will only practice under the supervision of the supervisor/monitor. The supervisor/monitor must contact the Executive Director of the Board if he or she feels that he or she cannot serve the practitioner. The practitioner will not be able to practice until a temporary supervisor/monitor is assigned. If the Board cannot approve a new supervisor/monitor, then the practitioner must not practice until a new one is approved.
- The supervisor/monitor must be licensed under Chapter 480 of the Florida Statutes and cannot have any limitations or restrictions on his license. The supervisor/monitor cannot have any disciplinary action against him or her now or in the past and must be without violation against any Board rules or Chapters 456 or 480 of the Florida Statutes. The supervisor/monitor must also be involved in the same specialty as the practitioner unless stated otherwise by the Board.

(4) Each new quarter begins when the Final Order is filed.

- All quarterly reports must be submitted to the Board within three months from the filing date of the Final Order.
- All semiannual reports must be submitted to the Board within six months from the filing date of the Final Order.

- All annual reports must be submitted to the Board within twelve months from the filing date of the Final Order.

Chapter 64B7-31 ***COLONIC IRRIGATION***

64B7-31.001 Colonic Irrigation

The Department administers a colonic irrigation examination. To be eligible, you must have completed training at a Board-approved massage school or, if you were an apprentice in an approved apprenticeship, you must have completed 100 hours of colonic irrigation training, including at least 45 hours of clinical practicum (having given at least 20 treatments). In order to practice colonic irrigation, the Massage Therapist must pass this examination.

Chapter 64B7-32 ***BOARD APPROVED MASSAGE SCHOOL***

64B7-32.001 Definitions

At an approved massage school, a classroom hour consists of no less than 50 minutes of any one clock hour in the presence of a school faculty member.

64B7-32.002 Documentation of Graduation from a Board-Approved Massage School

To apply for licensure in Florida, you will need an official transcript that details your massage training as far as each course of study, dates taken, hours spent, etc., plus a certificate or diploma if your transcript does not show you completed all the training.

64B7-32.003 Minimum Requirements of Board of Massage Therapy Approval

(1) Before the Board will approve a massage school or any satellite location of a previously approved school, the school must:

- First meet the requirements and be licensed by the Department of Education or licensing authority of another state or country or be in the Florida public school system.
- Offer a course of study that includes at least 500 classroom hours in the following specified areas of study:
 - Anatomy and Physiology - 150
 - Basic Massage Theory and Clinical Practicum - 225
 - Florida Statutes/Rules and History of Massage - 10
 - Theory and Practice of Hydrotherapy - 15
 - Allied Modalities - 97
 - HIV/AIDS Education - 3

- Apply directly to the Board and provide a sample transcript and a sample diploma; a copy of the curriculum, catalog or other course descriptions; faculty credentials; and proof of licensure by the Department of Education.
- (2) All the faculty members must meet minimum requirements of the Department of Education.
- (3) The approval could be withdrawn if the school fails to meet required criteria set forth in the Florida Administrative Code.
- (4) The school would have to notify the Board within 90 days about any changes in its curriculum, changes in faculty, or changes in address.
- (5) Of course, any change in ownership of a Board-approved school would also have to be approved by the Board.

64B7-32.004 Standards for Transfer of Credit

This rule is concerned with any credits earned as a result of your training, and transferring them to another school. You will need a certified transcript from a school that is licensed or approved.

64B7-32.005 Minimum Standards for Colonics Training

- (1) In addition to the currently required 500 hours of massage school training, you will also need another 100 classroom hours of colonics training. The 100 hours would have to follow the 500 completed hours, unless the 100 hours is incorporated within the curriculum at a Board-approved massage school.
- (2) Your 100 hours of training in the subject of colonics would have to be obtained through a course offered by either a Board-approved school or other Board-approved provider for colonics training only.
- (3) To apply for license as a colonics provider, you must also comply with Rule 64B7-28.010 summarized above.
- (4) If you want to become licensed as a colonics provider, you will have to submit a curriculum to the Board for approval. Those 100 hours must be apportioned among, but not limited to, these areas of study:
- 50 hours in classroom theory, anatomy, physiology, pathology of the colon and digestive system and principles of colon hygiene
 - 45 hours of practical experience, including procedure, history, clinical records and contraindication
 - 5 hours of sterilization techniques and familiarization with the types and makes of colonic irrigation equipment commonly used in the trade
- (5) The colonics training must be held at a licensed massage establishment or a Board-approved school.
- (6) You must also comply with the provisions of Rule 64B7-32.003(1)(a) above.

Chapter 64B7-33
ADVERTISEMENT

64B7-33.001 Advertisement

(1) Any advertisement of massage services in any advertising medium as defined herein shall include the license number of each licensed massage therapist and each licensed massage establishment whose name appears in the advertisement. The license numbers and names shall be legible and shall appear in the advertisement exactly as they appear on the license of the therapist or establishment.

(2) “Advertising medium” is any newspaper, airwave, or computer transmission, telephone directory listing (other than a listing for which no additional advertising charge is made), business card, handbill, flier, sign (other than a building directory listing all building tenants and their room or suite numbers), or other form of written advertising.

Title XXXII: Regulations of Professions and Occupations
Chapter 456
HEALTH PROFESSIONS AND OCCUPATIONS:
GENERAL PROVISIONS

This chapter, from the Florida Statutes, defines and describes the rules and rights governing the Department of Health, and its Boards within the Division of Medical Quality Assurance regarding a variety of health professions including: massage, chiropractic, psychiatry, podiatry, nursing, acupuncture, dentistry and osteopathic medicine. Of special note to massage therapists and owners of massage establishments are the following summarized sections:

456.018 Penalty for Theft or Reproduction of An Examination

It is a felony of the third degree to steal an examination administered by The Department of Health or any part of it, or to reproduce or copy all or any part of it.

456.019 Restriction on Requirement of Citizenship

As long as you are otherwise qualified to practice, you will not be prevented to practice just because you are not a United States citizen.

456.024 Members of Armed Forces in Good Standing with Administrative Boards

As long as you are a member of the Armed Forces of the United States on active duty, and for up to six months after your discharge from active duty, you will stay in good standing with the Department if you fail to register, pay dues or fees, etc. The only exception would be if you were employed or working in your licensed profession or vocation in the private sector for profit, during the six months following discharge.

456.034 Athletic Trainers and Massage Therapists; Requirement for Instruction on HIV and AIDS

You cannot renew your license without confirmation that you completed a continuing education course approved by the Board on the subject of HIV/AIDS. This course must include information on modes of transmission, infection control procedures, clinical management, and prevention of HIV/AIDS, with an emphasis on appropriate behavior and attitude change. No number of credit hours for this subject is specified.

If you are licensed by more than one board and each of those boards requires proof that you took a continuing education course on the subject of HIV/AIDS, then you only have to take one HIV/AIDS course that meets all the requirements of the professions, when you renew or recertify. Again, this course (and its provider) must be approved by the Board or the Department.

456.035 Address of Record

(1) As a licensee, you must notify the department in writing or by electronic means (with receipt confirmation) of your current mailing address and place of practice. If you fail to notify the Department of a change of address, then you may be disciplined by the Board. No matter if you notify the Department by postal service or e-mail, it's a good idea to always send it "return receipt requested".

(2) The Department is required to send you notices by regular mail to your last known address (that you previously provided to the Board). If your address(es) changed, and you did not notify the Board or did not receive receipt ("return receipt") of your notification, remember, it is not up to the Board to try to find you. It is up to you to write to the Board and give them your new addresses.

456.037 Business Establishments; Requirements for Active Status Licenses; Delinquency; Discipline; Applicability

(1) A business establishment regulated by the Division of Medical Quality Assurance pursuant to this chapter may provide regulated services only if the business establishment has an active status license. A business establishment that provides regulated services without an active status license is in violation of this section and F.S. 456.072, and the board, or the department if there is no board, may impose discipline on the business establishment.

(2) A business establishment must apply with a complete application, as defined by rule of the board, or the department if there is no board, to renew an active status license before the license expires. If a business establishment fails to renew before the license expires, the license becomes delinquent, except as otherwise provided in statute, in the license cycle following expiration.

(3) A delinquent business establishment must apply with a complete application, as defined by rule of the board, or the department if there is no board, for active status within six months after becoming delinquent. Failure of a delinquent business establishment to renew the license within the six months after the expiration date of the license renders the license null without any further action by the board or the department. Any subsequent licensure shall be as a result of applying for and meeting all requirements imposed on a business establishment for new licensure.

(4) The status or a change in status of a business establishment license does not alter in any way the right of the board, or of the department if there is no board, to impose discipline or to enforce discipline previously imposed on a business establishment for acts or omissions committed by the business establishment while holding a license, whether active or null.

(5) This section applies to any business establishment registered, permitted, or licensed by the department to do business. Business establishments include, but are not limited to, dental laboratories, electrology facilities, massage establishments, and pharmacies.

456.038 Renewal and Cancellation Notices

At least 90 days before the end of a licensure period, the Department must send you notification that your license will need to be renewed, whether you are active or inactive in status. Likewise, the Board is required to mail you notice of pending cancellation of licensure in the same manner.

You must notify the Board of Massage in writing with any change of address, whether it is your home address or the place where you practice massage, so you will receive these important notices.

When the Department sends you a licensure renewal notice or a notice of pending cancellation of licensure, you should see on it a statement such as the following:

“A licensee who remains on inactive status for more than two consecutive biennial licensure cycles and who wishes to reactivate the license may be required to demonstrate their competency to resume active practice by sitting for a special purpose examination or by completing other reactivation requirements. . . .”

456.067 Penalty for Giving False Information

It is a felony of the third degree to knowingly give false information, or misleading statements or misrepresentations when you apply for a license.

References

1. www.doh.state.fl.us/mqa/massage/ma_statutes.html: The Florida State Medical Quality Assurance web site, location of the Statutes and Rules for massage therapy practice in Florida.
2. Tonia Dandry Aiken, *Legal and Ethical Issues in Health Occupations* (WB Saunders, Co., 2002)